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EXAMINER

NALEVANKO, CHRISTOPHER R

ART UNIT PAPER NUMBER

2611

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/512,306

Applicant(s)

NAKADA ET AL.

Examiner

Christopher R. Nalevanko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,5,7,9,10,12-15,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7,9,10,12-15,17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. In response to applicant's argument that Thomas et al cannot attain the objects of the present invention, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).
2. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.
3. Regarding Claims 7 and 9, Applicant's failure to adequately traverse the Examiner's taking of Official Notice is evidence of the facts noticed.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim, the claim is dependent upon a canceled claim, rendering the claim indefinite. Appropriate correction is required.

\*\*\*The following art rejections are based on the Examiner's best understanding of the claimed limitation in light of the above 35 USC 112 2nd paragraph rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5, 10, 12-15, and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thomas et al (5,666,645).

Regarding Claim 1, Thomas shows a program guide information producing apparatus for outputting self-produced program guide information (col. 5 lines 25-40, EPG database, fig. 1 item 70, feed generation to broadcasting stations, col. 10 lines 20-25, headends receiving EPG) and other broadcaster's common program guide information (col. 5 lines 60-67, col. 6 lines 1-10, common data for hundred of television stations) comprising a self-produced information transmitting section (col. 8 lines 45-67, edition generation, col. 9 lines 5-65, sending editions to EPG providers or head-ends), a common

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program guide information receiving section (col. 5 lines 60-67, col. 6 lines 1-10, common data for hundred of television stations received at ADC, fig. 1 item 80, data streams) and a program guide output section (fig. 1 items 70 and 40, feed generation and edition generation, col. 9 lines 5-10, 50-55, distributing information to EPG providers), where in said program guide information producing apparatus comprises a common program guide information producing section which produces self-produced common program guide information (col. 6 lines 1-10, common data for hundred of television stations, col. 7 lines col. 7 lines 5-20, differences between EPG information generated, col. 8 lines 45-67, col. 9 lines 5-18, single composite edition) based on received program organizing information (col. 5 lines 25-41, context information that determines when program will be aired and on what channel, also channel maps, PPV pricing and schedule information). Thomas further shows that the self-produced common program guide information is sent from the common program guide information producing section to the self-produced information transmitting section (fig. 1, ADC 10 sends data to 90 for processing, then subsequently to feed generation 70 and edition generation 40 to send to EPG providers or headends, fig. 1 items 70 and 40, feed generation and edition generation, col. 9 lines 5-10, 50-55, distributing information to EPG providers) and transmits the self-produced common program guide information to a program guide information collecting apparatus (col. 5 lines 30-40, sending EPG data to different EPG providers, col. 9 lines 5-35, 50-65, transmitting EPG data to EPG providers). Finally, Thomas shows that the program guide information output section receives the self-produced common guide information from the common producing section (col. 6 lines 1-

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10, common data for hundred of television stations, col. 7 lines 5-20, differences between EPG information generated, col. 8 lines 45-67, col. 9 lines 5-18, single composite edition, col. 7 lines 20-67, manual insertion of self produced data into data stream) and also receives other broadcaster's common program information (col. 5 lines 60-67, program schedule for hundreds of television stations, including networks, affiliates, cable channels, premium services, col. 6 lines 1-17, common data extract or common data to all EPG data sets, col. 11 lines 30-35, nationwide broadcast data sent) to output the received program guide information to a multiplexing apparatus (col. 11 lines 11-67, col. 12 lines 1-25, digital cable data feed generation, broken down into packets and packet Ids used to identify distinct data streams within feed, formatted digital data passed to distribution center and uplinked).

Regarding Claim 2, Thomas shows a program guide information output section (fig. 1 item 70 feed generation) which unites said self-produced common program guide information with other broadcaster's common program guide information (col. 5 lines 60-67, EPG data for hundred of television stations, col. 9 lines 5-40, single composite edition), and outputs the united common program guide information (col. 9 lines 5-40, single composite edition).

Regarding Claim 4, Thomas shows a common program guide information storing section (fig. 1, EPG main database) which stores the other broadcaster's common program guide information corresponding to a designated time duration in advance ((col. 6 lines 12-16, EPG database maintains time period, such as a day, col. 8 lines 55-60, time windows for edition to be generated, col. 12 lines 8-11, data airing for a week).

Regarding Claim 5, Thomas further shows that the information producing apparatus has a self-produced information transmitting section which transmits information relating to broadcast time (col. 5 lines 30-34, context data relating to broadcast time and channel, col. 11 lines 45-55, feed for context data) of programs to a program guide information collecting/transmitting apparatus (col. 5 lines 25-40, EPG database, fig. 1 item 70, feed generation to broadcasting stations, col. 10 lines 20-25, headends receiving EPG).

Regarding Claim 10, Thomas further shows transmitting control data and EPG data on a more frequent basis to those programs currently airing that day (col. 12 lines 1-11).

Regarding Claim 12, Thomas further shows a self-produced information checking section which obtains and checks self-produced information stored in a program guide information collecting/transmitting after said self-produced information is transmitted to said program guide information collecting/transmitting apparatus (col. 7 lines 5-20, checking for difference in EPG data, col. 7 lines 20-67, corrections subsystem for checking and making changes to received information, col. 8 lines 10-45, validation and checking system).

Regarding Claim 13, Thomas shows a program guide information collecting/transmitting system (fig. 1) including a program guide information collecting/transmitting apparatus for transmitting program guide information to other broadcasters (fig. 1 item 70, feed generation, col. 10 lines 20-25, headends receiving EPG), wherein each broadcaster generates self-produced common program guide

information based on received program organizing information (col. 5 lines 25-41, context information that determines when program will be aired and on what channel, also channel maps, PPV pricing and schedule information) and transmits the self-produced common program guide information to said program guide information collecting/transmitting apparatus (fig. Item 80, incoming streams, col. 5 lines 60-67, EPG data for hundreds of stations received), said program guide information collecting/transmitting apparatus transmits the received self-produced common program guide information of said each broadcaster to other broadcasters (fig. 1 item 70, feed generation, col. 10 lines 20-25, headends receiving EPG), and said other broadcasters receive the transmitted self-produced common program guide information of said each broadcaster as common program guide information produced by a different broadcaster (col. 6 lines 1-11, common information, col. 9 lines 5-35, single composite edition of common EPG data sent to multiple providers).

Regarding Claim 14, Thomas shows that the program guide information collecting/transmitting apparatus comprises a common program guide information storing section (col. 5 lines 50-67, ADC system collecting providers EPG data) which administrates the self-produced common program guide information transmitted from said each broadcaster (col. 5 lines 60-67, EPG data for hundreds of stations received).

Regarding Claim 15, Thomas shows that each broadcaster transmits the self-produced common program guide information corresponding to a designated time duration to said program guide information collecting/transmitting apparatus (col. 5 lines 25-50, storing data about when programs will be aired, col. 6 lines 12-16, EPG database



maintains time period, such as a day, col. 8 lines 55-60, time windows for edition to be generated, col. 12 lines 8-11, data airing for a week), and said program guide information collecting/transmitting apparatus causes said common program guide information storing section to store the received self-produced common program guide information transmitted from said each broadcaster during said designated time duration (col. 5 lines 50-67, ADC system collecting and storing providers EPG data, col. 6 lines 12-16, EPG database maintains time period, such as a day, col. 8 lines 55-60, time windows for edition to be generated, col. 12 lines 8-11, data airing for a week).

Regarding Claim 17, Thomas shows a program guide information producing apparatus for outputting produced program guide information and other broadcaster's program guide information (col. 6 lines 1-10, common data for hundred of television stations, col. 7 lines col. 7 lines 5-20, differences between EPG information generated, col. 8 lines 45-67, col. 9 lines 5-18, single composite edition), said program guide information producing apparatus comprising: an inter-station self-produced information transmitting section which directly transmits self-produced information to other broadcasters (col. 5 lines 25-40, EPG database, fig. 1 item 70, feed generation to broadcasting stations, differences between EPG information generated, col. 8 lines 45-67, col. 9 lines 5-18, single composite edition), and an inter-station common program guide information receiving section which directly receives common program guide information from other broadcasters (col. 5 lines 50-67, ADC system collecting and storing providers EPG data).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7, 9, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al (5,666,645).

Regarding Claim 7, Thomas also shows the ability to produce and store different editions or versions of EPG data (col. 6 lines 50-55, col. 8 lines 45-65, editions for different geographic locations and EPG providers). Thomas fails to specifically state using a version number to designate different version. Official Notice is given that it is well known and expected in the art to use a number to designate different versions or editions. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use version numbers to designate different version so that the system and operators would know what version to provide to what provider.

Regarding Claim 9, Thomas further shows a self-produced information transmitting section (col. 11 lines 20-25, data feed) which transmits control information prior to other information (col. 11 lines 22-45, transmitting control data on separate stream prior to EPG data, col. 13 lines 10-31, software data) when renewed self-produced information is sent to a program guide information collecting/transmitting apparatus (col. 12, lines 1-25, continuous stream of data enabling the updating of data). Thomas fails to

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specifically state that the control data is used for recording. Official Notice is given that it is well known and expected in the art to include recording capabilities in control codes. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Thomas with the ability to include recording capabilities into the control code so that the system could control the ability of a user to record or save a program.

Regarding Claim 18, Thomas further shows transmitting control data and EPG data on a more frequent basis to those program currently airing that day (col. 12 lines 1-11).

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Nalevanko whose telephone number is 571-272-7299. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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